PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was $1.7 billion in 2010, an increase of $961 million from 2009. U.S. goods exports in 2010 were $6.7 billion, up 37.2 percent from the previous year. Corresponding U.S. imports from Peru were $5.1 billion, up 20.6 percent. Peru is currently the 34th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was $6.2 billion in 2009 (latest data available), up from $4.8 billion in 2008. U.S. FDI in Peru is led by the mining sector.

TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, the PTPA Implementation Act became law, and the PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement that has significantly liberalized and will continue to liberalize trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; services; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

IMPORT POLICIES

Tariffs

Upon entry into force of the PTPA in February 2009, 80 percent of U.S. exports of consumer and industrial products entered Peru duty free immediately. Remaining tariffs on these goods phase out within 10 years. More than two-thirds of current U.S. agricultural exports also gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. agricultural products will phase out within 17 years. All tariffs will end in 17 years. Peru also agreed to eliminate its price band system on trade with the United States upon entry into force of the PTPA.

Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over 8 years old. The value added tax does not apply to charitable donations, although this charitable exemption requires prior registration with APCI (The Peruvian Government's Agency for International Cooperation). A 45 percent excise tax applies to used cars and trucks receiving import permits (compared to 20 percent for a new car). If these used cars and trucks undergo refurbishment in an industrial center in the south of the country after importation, no excise tax applies. Under the PTPA, Peru may not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and Peru may not apply to remanufactured goods certain existing prohibitions on trade in used goods. This commitment opens new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

GOVERNMENT PROCUREMENT

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms in government procurement. However, the price preference may not be applied against U.S. companies bidding in procurement covered by the PTPA. The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Also, under the PTPA, U.S. suppliers can bid on procurements of most Peruvian central government entities on the same basis as Peruvian suppliers. This includes procurements by state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency. The anticorruption provisions in the PTPA require Peru's domestic law to treat bribery related to trade and investment, including in government procurement, as a criminal offense or subject it to non-criminal penalties where criminal responsibility is not applicable.

Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru was listed on the Watch List in the 2010 Special 301 report. As a result of the PTPA, Peru enhanced its IPR legal framework significantly to strengthen IPR protection and enforcement. Among other improvements, Peru strengthened its intellectual property office and created a National Strategic Plan to combat counterfeiting and piracy. Notwithstanding the improvements to Peru's IPR legal regime, piracy rates remain high. Inadequate law enforcement contributes to ubiquitous counterfeit clothing, medicines, music, videos, software, and toys. There is also a continuing need for measures to prevent government use of unlicensed software. A further concern is the need for deterrent penalties in criminal IPR cases and against businesses found to have engaged in infringing activity. In addition, there is a need for clarity with respect to Peru's system for protecting undisclosed test or other data submitted to obtain approval of agricultural chemical products.

SERVICES BARRIERS

Telecommunications

In August 2010, Peru's telecommunications regulator (OSIPTEL) established a "glide path" plan to continuously lower the mobile termination rates for all carriers by October 2013. This created a more favorable competitive environment for smaller carriers. While U.S. companies are pleased that the final rate in 2013 will be competitive with the other carriers, they remain concerned that the 2013 rates will be based on the current cost structure, which by 2013 will be higher than actual costs, assuming a continued downward trend in cost per call. Mobile termination rates affect U.S. companies more significantly than the other companies because U.S. companies have a lower market share and therefore more calls terminate on another carrier's network. The United States will continue to monitor the rates and urge OSIPTEL to base the rates on actual, not historical costs.

INVESTMENT BARRIERS

The PTPA establishes a secure and predictable legal framework for U.S. investors operating in Peru. Under the PTPA, U.S. investors and their investments are accorded national and most favored nation treatment, and U.S. investors are permitted to make financial transfers freely and without delay. The PTPA applies international legal standards for expropriation and compensation, and provides for binding international arbitration for the resolution of investment disputes. In most circumstances, the PTPA guarantees U.S. investors the right to establish, acquire, and operate investments in Peru on an equal footing with domestic investors.

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Foreigners are also restricted from owning land or investing in natural resources located within 50 kilometers of its border, though special authorization to operate within those areas may be granted. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. In the past, U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency. No new complaints were received in 2010, although some prior claims remain unresolved.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also made efforts at judicial reform. In July 2005, the Supreme Court issued an edict stating that one cannot challenge binding arbitration awards in the domestic judicial system.